

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30-TBM

HATEM NAJI FARIZ

RENEWED MOTION OF MEDIA GENERAL OPERATIONS, INC.,
FOR ACCESS TO SEALED RECORDS

Media General Operations, Inc.,¹ moves for the immediate release of documents relating to the upcoming sentencing of the sole remaining defendant in this case, including documents S-55 through S-59. In light of the Court's announcement today of the upcoming sentencing, no basis exists for continued closure of these documents. Grounds for this motion are set forth in the following memorandum of law.

Memorandum of Law

This motion concerns the public's interest in contemporaneous access to documents giving rise to the July 25 sentencing. The public enjoys a presumptive right to inspect court records and to attend court proceedings. Under the First Amendment and common law, this right may be abridged only if closure serves a compelling or substantial interest and is no greater than necessary to serve that interest. *U.S. v. Ochoa-Vasquez*, 428 F.3d 1015, 1030 (11th Cir. 2005); *United States v. Brazel*, 102 F.3d 1120, 1155 (11th Cir.), *cert. denied*, 522 U.S. 822 (1997); *Newman v. Graddick*, 696 F.2d 796, 802 (11th Cir. 1983). Moreover, "there is a significant

¹ Media General Operations, Inc. has previously intervened in this action for the limited purpose of seeking access to judicial proceedings and records. *See, e.g.*, Dkt. No. 1475 (granting motion of Media General Operations for access to completed juror questionnaires). *See generally United States v. Ellis*, 90 F.3d 447, 449 (11th Cir. 1996) (allowing media intervention for limited purpose of seeking access to information), *cert. denied*, 519 U.S. 1118 (1997).

public interest in affording that opportunity contemporaneously with” the proceedings relating to those records. *See Application of National Broadcasting Co., Inc.* 635 F.2d 945, 952 (2d Cir. 1980) (networks entitled to contemporaneous access to videotapes admitted into evidence). As the United States Supreme Court has recognized, after-the-fact access is not sufficient to serve First Amendment interests. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 562 n.3 (1980) (closed courtroom not justified despite prompt release of trial tapes after its conclusion).

In this case, Defendant Fariz previously claimed that unsealing documents S-55 to S-59 would create “a substantial probability that that Mr. Fariz’s rights to a fair trial would be prejudiced.” *See* Dkt. No. 1586 pages 2-3. On June 2, 2006, this Court found that Defendant Fariz’s “right to a fair trial may be prejudiced if the requested documents were unsealed *at this time*.” *See* Dkt. No. 1592 page 1 (emphasis added). That determination, however, was explicitly made “without prejudice.” *Id.* In light of the announced sentencing, it is clear that Mr. Fariz has waived his right to a trial. Therefore, no basis exists for continued closure. As this Court has recognized in this case, once the reason for closure evaporates, any seal on documents in the court file must be lifted. So, for example, although the Court previously sealed juror questionnaires in order to protect the fair-trial rights of Defendant Fariz and his co-defendants, once the previous trial concluded, the Court recognized that concealment of the records at issue was no longer necessary. *See* Dkt. No. 1475. Similarly, release of the documents filed May 9-10, 2006, will not endanger Defendant Fariz’s fair-trial rights, because by agreeing to sentencing he has waived his right to a trial.

In sum, and in light of this Court’s determination that the earlier sealing of these documents was without prejudice to a future request for access, the documents should be

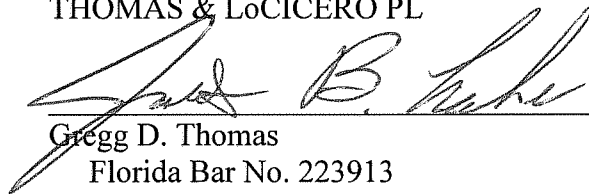
released promptly and in advance of the upcoming sentencing, so that the public is able to fully understand those proceedings.

Conclusion

No basis exists for the continued closure of documents S-55 to S-59 and any related documents. Accordingly, these documents should be placed in the public record as soon as possible.

Respectfully submitted,

THOMAS & LoCICERO PL



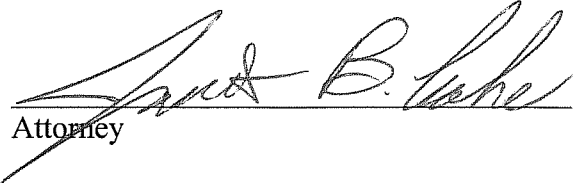
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 11, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to Kevin T. Beck, Stephen N. Bernstein, Alexis L Collins, Stephen M Crawford, Daniel W. Eckhart, Brooke Victoria Elvington, Walter E. Furr, III, Mara Allison Guagliardo, Bruce G. Howie, Steven Douglas Knox, Cherie L. Krigsman, Linda G. Moreno, Wadie E. Said, David M. Snyder, Alison M. Steele, and Terry Zitek.



Attorney